IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.1220 OF 1998

1. M/s.Ruby Organics Private Limited,)
A Private Limited Company, Registered)
Under the Companies Act, 1956, and)
having their Factory at D-79, TTC,)
MIDC, Turbhe, Navi Mumbai 400 705)
and Registered office at 11-A,)
Sandeep Park, Deonar, Mumbai 400 088.)

2. M/s.United India Insurance Company)
Ltd., A Body Corporate, Subsidiary)
of the General Insurance Corporation)
of India, having their Registered)
Office at 24, Whites Road,)
Madras 600 014, and one of their)
Mumbai R.C.F Divisonal Office at)
Priyadarshani, Eastern Express)
Highway, Sion, Mumbai 400 022.)...Plaintiffs

Versus

M/s.Maharashtra State Electricity Board)
having their Head Office at"Prakashgad")
Bandra (E), Mumbai 400 051.)...Defendants

Shri V.S.Amin i/by V.S.Amin & Co for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : JULY 25, 2007.

ORAL JUDGMENT:

1. This suit is kept under the caption of "Undefended Suits for Exparte Decree".

2. The first Plaintiff is a private limited company. The first Plaintiff is having its factory at Plot No.D-79, T.T.C, MIDC, Turbhe, Navi Mumbai. According to the case of the Plaintiffs on 29th March, 1995 at about 6.30 p.m, a high voltage overhead power

supply line of the Defendant snapped and fell over the domestic supply line which supplies the electricity to the factory of the first Plaintiff. As a result there was a wild fluctuation of electricity current resulting in sparks and fire which spread rapidly in the factory premises of the first Plaintiffs. The local fire brigade rushed to the site and extinguished the fire. According to the case of the Plaintiffs, due to the said fire the building, the wooden loft with steel angle supports, machinery and accessories, raw materials, packing materials and finished goods were badly burnt, charred or destroyed. The first Plaintiff had taken an insurance from the second Plaintiff Company. The first Plaintiff lodged a claim with the second Plaintiff on the basis of the policy of insurance. The second Plaintiff accepted the claim and paid a sum of Rs.09,15,826/- to the first Plaintiff. On receipt of the said amount, the first Plaintiff executed in favour of the second Plaintiff a letter of subrogation and a special power of attorney dated 06th March, 1998.

3. The case made out in the plaint is that the cause of the fire was the negligence of the Defendant in not providing proper devise/buttguard. It is contended that the cause of fire is the negligence and/or misfeasance and /or non-feasance on the part of the Defendants, their servants and employees. It is alleged

that if the Defendant had taken proper care and caution with regard to the high tension overhead line, the accident and fire could not have occurred. The claim in the suit is of Rs.09,29,970/- comprising of the loss suffered by the Plaintiffs assessed at the sum of Rs.09,02,998/-, fire brigade charges of Rs.12,428/- and surveyor's fees of Rs.14,144/-.

4. The Plaintiffs have filed an affidavit of evidence on one Shri H.J.A.Khan, Deputy Manager of the second Plaintiff. The said affidavit is taken on record and marked "X" for identification. The original documents in support of claim of the Plaintiffs are tendered on record alongwith a list. The list and the documents are marked "Y" (collectively) for identification and the same are taken on record. The Plaintiffs have placed on record a survey report dated 04th January, 1996 of M/s.Natrajan P.S, Surveyors, Accessors and Valuers. In the said report, the total loss caused to the factory of the Plaintiff, raw-material, finished stocks, machinery, accessories etc., has been quantified at Rs.09,05,898/-. The said survey report has been duly proved by the evidence of Shri H.J.A.Khan. The original letter of subrogation and the power of attorney executed by the first Plaintiff in favour of the second Plaintiff are also taken on record and are proved by the said witness. The fact that the

second Plaintiff was required to pay fees of Rs.14,144/- to the surveyor is also established by the said report of the surveyor. A certificate dated 04th April, 1998 issued by the City and Industrial Development Corporation of Maharashtra Ltd is also produced and proved which discloses that a sum of Rs.12,428/- was required to be paid as fire call charges for extinguishing the fire. Thus, claim of the Plaintiffs has been duly proved by the said affidavit and the Documents produced by the Plaintiffs have been duly proved. The case made out in the plaint as regards the negligence on the part of the Defendants has gone unchallenged. Thus, the liability of the Defendants has been established.

5. The Plaintiffs have prayed interest at the rate of 16 per cent per annum from the date of institution of the suit till realisation. Obviously, there is no agreement between the parties as regards payment of interest. The interest will have to be granted at the rate of 6 per cent per annum.

6. Hence, the suit is decreed in terms of prayer clauses (a) and (b) with a modification that the interest payable will be at the rate of 6 per cent per annum from the date of filing of the suit till payment or realisation. Certified copy is expedited.

Plaintiffs will be entitled to refund of court fees, if any, in accordance with law.

JUDGE